

**IN THE DISTRICT COURT OF ^ COUNTY, NEBRASKA**

**THE STATE OF NEBRASKA,**  
Plaintiff,

vs.

^,  
Defendant.

Case No. ^

**PRETRIAL ORDER**

**DATE OF CONFERENCE:** ^.

**PLACE OF CONFERENCE:** ^ County Courthouse, ^, Nebraska.

**APPEARANCES:**

For the plaintiff(s): ^ County Attorney.

For the defendant(s): ^ County Public Defender with defendant.

1. **INTERNET HOME PAGE:** The court’s Internet home page address is:

**[www.nol.org/home/DC8/](http://www.nol.org/home/DC8/) or [www.dc8.state.ne.us](http://www.dc8.state.ne.us)**

2. **PLEA AGREEMENTS:** The court has previously advised all parties, and all parties acknowledge, that requests for continuance of the pretrial conference have been available in order to accommodate any reasonable requests for opportunity for plea negotiations. The parties have advised the court that all plea negotiations have been exhausted, and the matter is ready for immediate trial. After this pretrial conference, the court will not authorize or approve any plea bargain agreements reducing the severity of charges or the number of charges. The matter will proceed to trial on all counts unless the defendant withdraws any “not guilty” plea and enters a “guilty” or “no contest” plea to all counts.

3. **JURY:** The defendant expressly waived his right to trial by jury, and consented to trial to the court without a jury.

4. **JURY:** The defendant confirmed his exercise of the right to trial by a 12-person jury.

5. **TRIAL:** Trial shall be held as follows:

A. TYPE: Trial to the court without a jury (see ¶ 3 above).

B. TYPE: Trial to a jury of 12 persons (see ¶ 3 above).

- C. PLACE: The trial will be held at the District Courtroom, ^ County Courthouse, ^, Nebraska.
  - D. DAY(S): The trial is budgeted for ^ day(s) of trial time.
  - E. DATE/TIME: The trial shall be subject to call at **Trial Session No.** ^, unless subsequently continued to a later trial session. Unless otherwise notified by the court at the time of call for trial, the trial shall begin at 9:00 a.m. ^(Although the court would have scheduled this matter for an earlier trial session, at the request of counsel the matter was deferred to a later trial session.)
  - F. PRIORITY (Criminal):
    - (1) Priority Date: ^.
    - (2) The case shall be heard at the trial session in order of priority by date of placement on the trial calendar (the “priority date”), having priority for trial over all civil cases.
    - (3) The status of the court’s trial calendar, kept continually current, may be viewed on the court’s Internet site.
6. **INFORMATION:** After discussion between the court and counsel, it was determined that:
- A. INFORMATION: The case will be tried on the ^ information filed on ^.
  - B. ENDORSEMENT OF WITNESSES: In addition to any witnesses authorized for endorsement by any previous order, the following persons shall be deemed as endorsed as witnesses without necessity of physical endorsement: ^.
  - C. AFFIRMATIVE DEFENSES: Counsel for defendant confirmed that there are no affirmative defenses requiring advance notice to be raised at trial.
  - D. AFFIRMATIVE DEFENSES: Counsel for defendant advised that the following affirmative defenses requiring advance notice may be raised at trial:
    - (1) Insanity;
    - (2) Self Defense;
    - (3) Defense of Another;
    - (4) Defense of Property;
    - (5) Choice of Lesser Harm;
    - (6) Entrapment;

(7) ^.

7. **DISCOVERY:** After discussion among the court and counsel, the court finds that discovery is completed<sup>^</sup>, except <sup>^</sup>. The parties may stipulate for additional discovery if the stipulation will not delay any trial or the progression of the case toward trial, and the court may grant additional discovery upon motion and hearing, upon the showing of good cause.

8. **EXHIBITS:**

A. **NONDOCUMENTARY/OVERSIZE EXHIBITS:** Pursuant to Supreme Court rule:

(1) The party offering any nondocumentary item of physical evidence shall provide a photograph, not exceeding 8½ by 11 inches and which fairly and accurately depicts the item, to the court reporter at the time the original exhibit is marked.

(2) The party offering any documentary item of evidence exceeding 8½ by 11 inches shall provide a reduced size photographic copy or photograph, not exceeding 8½ by 11 inches and which fairly and accurately depicts the item, to the court reporter at the time the original exhibit is marked.

(3) The court reporter shall refuse to mark and the Court may refuse to accept any such item submitted but not accompanied by such copy or photograph.

B. **MARKING EXHIBITS:** All exhibits shall be marked by the official court reporter (“reporter”). Counsel shall not pre-mark exhibits except after consultation with and obtaining approval of the reporter. **Counsel shall appear at least 30 minutes prior to trial** to present exhibits to the reporter for marking, unless counsel has made advance arrangements with the reporter for pre-marking of exhibits. If exhibits are too numerous to be marked within such 30 minute period, counsel shall make advance arrangements with the reporter for pre-marking of exhibits. Except for matters arising during trial which could not reasonably have been foreseen, all exhibits shall be marked prior to the commencement of trial.

9. **STIPULATIONS:**

A. During the pretrial conference, with the approval of the court, the respective counsel for all of the parties stipulated on behalf of their respective clients as follows:

- (1) The parties waive all objections on the following exhibits and stipulate that the same may be admitted without objection upon offer by either party, to-wit: ^.
- (2) The parties waive foundation on the following exhibits and stipulate that the same may be admitted without foundation, but reserve any other objection to them, to-wit: ^.
- (3) ^.

10. **TRIAL PROCEDURES:** After discussion between the court and counsel, it was determined that:

- A. **WAIVER OF JURY SEQUESTRATION:** The defendant voluntarily waived the statutory right of sequestration of the jury during deliberations.
- B. **JURY SEQUESTRATION:** The statutory right of sequestration of the jury during deliberations has not been waived.
- C. **RECORD REQUESTS:** No “omnibus” request for verbatim record has been made pursuant to Supreme Court Rule 5A(2) of Practice and Procedure, and any trial proceeding for which a record is desired and not mandated by Supreme Court Rule 5A(1) of Practice and Procedure shall be specifically requested by counsel at the time of such proceeding.
- D. **NOTE TAKING:** Note taking by the jury shall not be allowed.
- E. **NOTE TAKING:** Note taking by the jury shall be allowed, provided that such notes shall be retained by the bailiff during any recess and shall be destroyed at the conclusion of the trial. Such notes shall be deemed confidential to the particular juror, and shall not be subject to examination by any party or counsel.
- F. **WITNESS SEQUESTRATION:** Witness sequestration pursuant to Rule 615 is waived by all parties.
- G. **WITNESS SEQUESTRATION:** Pursuant to the request of a party under Rule 615, witnesses shall be excluded from the courtroom during the testimony of other witnesses so that excluded witnesses cannot hear the testimony of other witnesses. The parties and their respective attorneys are further prohibited from directly or

indirectly communicating the content of a witness's trial testimony to any other witness.

- H. **VIDEOTAPE DEPOSITIONS:** Unless otherwise stated on the deposition record at the commencement of such deposition and which shall be called to the court's attention upon the offer thereof, any videotaped deposition:
    - (1) shall have the videotape marked as an exhibit by the official court reporter, and shall also have a written transcript thereof marked as a related exhibit, both of which exhibits shall be offered into evidence for purposes of the record only and shall not go to the jury; and,
    - (2) may be played to the jury without the concurrent taking down by the official court reporter of the played content thereof.
  - I. **PERMISSION TO APPROACH:** Counsel may approach a witness without requesting advance permission from the court where it is obvious that the purpose of approaching relates to examination concerning an exhibit. Counsel may approach the official court reporter without requesting advance permission from the court where it is obvious that the purpose of approaching relates to the marking or retrieving of an exhibit.
  - J. **USE OF COURTESY TITLES:** Counsel shall address jurors, witnesses, and each other in a formal manner, with the appropriate title (Mr., Mrs., Ms., Dr., etc.).
  - K. **SPEAKING TO JURORS:** Counsel, parties, and witnesses shall not address members of the jury and any alternate juror(s) (and prior to completion of oath administration to the trial jury, members of the jury panel) in any fashion outside of the courtroom, including, but not limited to, customary greetings of "good morning" or "hello." Counsel shall admonish all witnesses of this prohibition.
  - L. **JUDGE'S CHAMBERS:** During the trial, counsel shall not enter the judge's chambers unless accompanied by opposing counsel.
11. **PRETRIAL ISSUES:** After discussion between the court and counsel, it was determined that:
- A. **404 HEARINGS:** All hearings desired by the plaintiff required by § 27-404(3) required as a condition precedent to admission of 404 evidence have been held, and

the plaintiff will not offer any 404 evidence as to which hearing has not been held prior to this pretrial conference.

- B. VOLUNTARINESS HEARINGS: The defendant does not desire any further hearing as to voluntariness of any statements, and expressly waives any further voluntariness hearing(s).
  - C. VOLUNTARINESS HEARINGS: The defendant does desire a hearing as to the voluntariness of any statements made to ^, and such hearing shall be held outside the presence of the jury immediately prior to the testimony, if any, of said person(s).
  - D. SUPPRESSION: The defendant confirms that there will be no further motions to suppress, and expressly waives any suppression issues for which hearing has not already been held.
  - E. IN LIMINE: The defendant confirms that there will be no further motions in limine, and expressly waives any issues in limine for which hearing has not already been held.
12. **PRETRIAL MOTIONS:** No additional pretrial motions, including, without limitation, motions for 404 hearings, motions to endorse witnesses, motions to determine voluntariness, motions to suppress, and motions in limine, shall be hereafter filed or considered except upon showing of extraordinary cause.
13. **REQUESTED JURY INSTRUCTIONS:**
- A. All requested jury instructions shall be submitted to the Judge in sufficient time that the same shall be **received** by the Judge in chambers (see PREFERENCES FOR DELIVERY below) at least 10 days prior to trial. Copies of requests for instructions shall be served on opposing counsel.
  - B. Standard NJI2d (Crim) instructions with no requested deviations or specific additions may be requested by reference to the **instruction number and title** only.
  - C. The instructions required by this paragraph are for the assistance of the court and to enable the parties to have the best possible chance of having instructions tendered in the language desired by the parties. The court will **not** file these instructions with the clerk. The formal request for instructions not included in the court's draft instructions shall be filed with the clerk. Counsel should avoid formal filing with the clerk prior to the formal instruction conference so as to avoid unnecessary filings in the court file.

14. **TRIAL BRIEFS:** All trial briefs shall be submitted to the Judge (**not** filed with the clerk; see Uniform District Court Rule 5B) in sufficient time that the same shall be **received** by the Judge (see PREFERENCES FOR DELIVERY below) at least 10 days prior to trial. Copies shall be served on opposing counsel.
15. **DELIVERY PREFERENCES:** The court's preferences for delivery of requested jury instructions or trial briefs are:
  - A. First: By electronic mail (as attachment of word processing file) to Internet address — cassel08@nol.org (note that 08 following cassel are numeric while all others are alphabetic);
  - B. Second: On CDROM or 3.5" floppy diskette (prefer WordPerfect format) by personal delivery or by mail to P.O. Box 105, Ainsworth, NE 69210-0105;
  - C. Last: Hard copy by personal delivery or by mail to P.O. Box 105, Ainsworth, NE 69210-0105.
16. **OBJECTIONS:** The parties are allowed ten (10) days from the mailing of a copy of this order to them to file written objections to this order with the court clerk. A hearing will be held on any objections as noticed for hearing in compliance with Rule 8-3. Any objection not noticed for hearing in compliance with Rule 8-3 may be denied without a hearing.

Signed ^in chambers at ^Ainsworth, Nebraska, on ^;  
 DEEMED ENTERED upon file stamp date by court clerk.  
 If checked, the court clerk shall:

**BY THE COURT:**

- Mail a copy of this order, with all attachments, to all counsel of record and any pro se parties.  
 Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.
- Note the decision on the trial docket as: [date of filing] **Signed "Pretrial Order" entered; case assigned for trial at Trial Session No.** [number from order].  
 Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.

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**William B. Cassel**  
 District Judge

Mailed to: